

No. 13034.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JESSE M. ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF.

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Jurisdictional Statement.

This is an appeal in Admiralty from a final decree of dismissal in favor of the Respondent United States of America in the United States District Court for the Southern District of California, Central Division, in a seaman's action for maintenance and cure, a written contractual obligation for wages until the termination of disability and damages for tuberculosis resulting from the unseaworthiness of vessels upon which Libelant was employed.

The pleadings in the District Court were a first amended Libel *in Personam* [Ap. 2]; Answer of the United States of America [Ap. 10]; Respondent's Notice of Motion of Summary Judgment, Points and Authorities in support thereof [Ap. 16].

The Motion for Summary Judgment came before the United States District Court with the Honorable William Mathes, Judge, presiding, on the 26th day of February, 1951. It appeared that the motion did not lie in Admiralty and the question of liability of the Respondent United States of America was submitted to the Court upon a stipulated statement of facts [Rep. Tr. pp. 9, 10, 11, 12, 13 and 14].

Points and authorities were filed by Respondent and Libelant and the matter submitted.

The Honorable Judge then made his order for a decree in favor of Respondent on June 12, 1951 [Ap. 32]. Findings of Fact and Conclusions of Law signed after objections June 22, 1951 [Ap. 35], and a final decree was signed and entered on the 22nd day of June, 1951 [Ap. 39].

The Apostles on Appeal, certified by the Clerk of the District Court, included the following: Petition for Order Allowing Appeal without Prepayment of Costs [Ap. 41]; Order Allowing Appeal without furnishing Bond or Costs [Ap. 42]; Notice of Appeal [Ap. 43]; and Praecipe [Ap. 44].

The jurisdiction of the United States District Court over actions, Civil and Maritime, involving claims for maintenance and cure and damages, arises from Article III, Sections 1 and 2 of the United States Constitution, which provides that the judicial power of the United States shall be vested in the Supreme Court and such inferior courts as Congress may establish, and that such power shall extend to all civil cause of Admiralty and maritime jurisdiction.

Jurisdiction of civil causes of Admiralty and maritime jurisdiction was vested in the courts of the United States by the Act of Congress of September 24, 1789, Chapter 20, Sections 9, 11; Stat. L. 76, 78; 28 U. S. C. A., Section 1333.

Appeals from final decrees in Admiralty are authorized by 28 U. S. C. A., Section 1291; providing that the Courts of Appeals shall have jurisdiction of appeals from all final decisions of the District Courts of the United States.

Statement of the Case.

The Libelant, Jesse M. Allen, on May 27, 1944, entered into a written contract of employment with the United States as a seaman, Exhibit 3 in evidence [Rep. Tr. p. 12], among other things this contract provided the following:

“7. The Employee shall be furnished medical and surgical care at the expense of the Government for illness or injury sustained while in line of duty not resulting from the Employee’s own misconduct or delinquency. In the event of illness or injury occasioned by his employment but not due to the Employee’s misconduct, the base wages of the Employee will continue during the period of such incapacity. Any such payments made shall be deemed payments on account of or in full, as the case may be, of any other compensation for sick leave to which the Employee might be entitled on account of such injury or illness. The Government will furnish, or other-

wise provide without cost to the Employee, such medical treatment and hospitalization including subsistence as is necessary for the proper treatment of any such injury suffered or illness contracted while working for the Government; provided, such medical treatment or hospitalization will not be continued if the disability resulting from such injury or illness, in the judgment of a duly appointed medical officer of the United States Army or such other physician as may be designated by the Government, cannot be materially improved by further treatment or hospitalization; and, in this event, the Government may terminate this contract in writing. Upon such termination, the Employee will be returned, at the expense of the Government, to the most convenient port in the United States, to be determined by the Government and at the option of the Employee to the port of his original departure from the United States.

“8. The Employee shall be subject to such benefits as he may be entitled to under the United States Employees' Compensation Act of September 7, 1916, as amended, for injury sustained while in the performance of his duty.”

The Contract of the 27th of May, 1944, was extended by supplementary agreement dated the 14th of March, 1945, Exhibit 4 in evidence.

Libelant incurred tuberculosis during his contract of employment with the United States and said tuberculosis was proximately caused by the conditions of his employment [Resp. Ex. “A,” p. 11]; and has been

totally disabled as the result thereof since October 13, 1947 [Resp. Ex. "A," p. 13, and Resp. Ex. "A," p. 8].

On October 14, 1949, Congress amended the Federal Employees' Compensation Act (Chap. 691, Public Law 357) in Section 303(g) that "The remedy and liability under such act exclusive except as to masters and members of the crew of any vessel,"

Libelant had, on some date prior to 1948, applied for compensation as was provided for in his contract of employment [Libelant's Ex. 3, Par. 7] and said claim was denied on July 18, 1949 [Resp. Ex. "A," p. 12].

Respondent failed to pay Libelant his maintenance for the disability sustained in his employment as a seaman, and refused to pay Libelant his wages during his period of disability as provided for in his contract of employment [Libelant's Ex. 3, Par. 7] and in July of 1950, Libelant was forced to accept compensation under the Federal Employees' Compensation Act to supply him with money upon which he could live [Libelant's Ex. 5]. By reason of the failure of Respondents to pay the Libelant his maintenance due him pursuant to general Admiralty law or his base pay as provided for in his contract of employment, Libelant was required to borrow funds through the California State Department of Education and Bureau of Vocational Rehabilitation [Resp. Ex. "A," p. 5].

The District Court found that Libelant had elected to accept compensation and therefore was barred from recovering on the contractual liability of the United States.

Assignment of Errors.

(a) The District Court erred in finding that the acceptance of compensation under the Federal Employees' Compensation Act barred Libelant from recovering on his contract of employment and other contractual obligations of the Respondent which arose out of his employment.

(b) The District Court erred in not finding that Libelant's contract of employment with the United States provided as follows:

“In the event of illness or injury occasioned by his employment but not due to the Employee's misconduct, the base wages of the Employee will continue during the period of such incapacity.”

(c) The District Court erred in finding that Libelant applied for, received and accepted compensation payments voluntarily, without coercion, duress, misrepresentation or undue influence of any nature whatsoever, and with full knowledge and awareness that he was applying for and receiving from Respondent payments on account of compensation for his illness, under the Compensation Act.

(d) The District Court erred in concluding that Libelant, in accepting compensation provided under Federal Employees' Compensation Act, made his election to accept compensation under said Act.

(e) The District Court erred in concluding that Libelant, by acceptance of compensation under the Federal Employees' Compensation Act, made an election which bars and estops him from recovering from this act the public vessels act.

(f) The District Court erred in concluding that Respondent is entitled to a decree dismissing Libel with costs in Respondent's favor.

(g) The District Court erred in dismissing the First Amended Libel *in Personam*.

(h) The District Court erred in not finding that Libelant had completed all of the terms of his contract of employment and that Respondent is liable for all of the benefits provided for in the written contracts of employment which include Federal Employees' Compensation benefits and base wages in the sum of \$6,996.00 per year from the commencement of the disability resulting from tuberculosis until the same terminated.

(i) The District Court erred in not finding that Libelant was entitled to recover damages proximately resulting from the contractual obligation of the United States to furnish a seaworthy vessel.

Outline of Argument.

1. This appeal is a trial *de novo*.
2. The provisions of Section 303(g) of the Federal Employees' Compensation Act, Chapter 691—Public Law 357 of the 81st Congress, approved October 14, 1949, is unconstitutional.
3. The District Court erred in finding that the Libelant did elect to accept Compensation in lieu of any other benefits he was entitled by contract.
4. The District Court erred in finding that Libelant accepted Compensation without duress or coercion.
5. The District Court erred in dismissing the libel.
6. The District Court erred in not finding that Libelant was entitled to recover from Respondent on his first and third causes of action.

ARGUMENT.

I.

This Appeal Is a Trial De Novo.

No authority is necessary upon this point in this Circuit.

II.

**The Provisions of Section 303(g) of Chapter 691—
Public Law 357 of the 81st Congress, Approved
October 14, 1949, Are Unconstitutional.**

This Section reads as follows:

“The amendment made by Section 201 of this Act to Section 7 of the Federal Employees’ Compensation Act, making the remedy and liability under such Act exclusive except as to masters or members of the crew of any vessel, shall apply to any case of injury or death occurring prior to the date of enactment of this Act: *Provided, however,* That any person who has commenced a civil suit or an action in admiralty, with respect to such injury or death prior to such date, shall have the right at his election, to continue such action notwithstanding any provision of this Act to the contrary, or to discontinue such action within six months after such date before final judgment and file claim for compensation under the Federal Employees’ Compensation Act, as amended, within the time limited by sections 15 to 20 of such Act (including any extension of such time limitations by any provision of this Act), or within one year after enactment of this Act, whichever is later. If any such action is not discontinued and is decided ad-

versely to the claimant on the ground that the remedy or liability under the Federal Employees' Compensation Act is exclusive, or on jurisdictional grounds, or for insufficiency of the pleadings, the claimant shall, within the time limited by sections 15 to 20 of such Act (including any extension of such time limitations by any provision of this Act), or within one year after final determination of such cause, whichever is later, be entitled to file a claim under such Act.

“Section 201 of the Act provides that the liability of the United States or any of its instrumentalities under this Act shall be exclusive, . . . : *Provided, however,* That this subsection shall not apply to a master or a member of the crew of any vessel.”

Section 305(b) of this Act provides:

“Nothing contained in this Act shall be construed to affect any maritime rights and remedies of a master or member of the crew of any vessel.”

Libelant was employed as a seaman pursuant to written contracts with the Army Transportation Service under the dates of May 27, 1944, extended by a contract of April 14, 1945 [Rep. Tr. p. 12].

Among other things the contract of May 27, 1944, provides in paragraph 6, as follows:

“In the event of illness or injury occasioned by his employment but not due to the employee's misconduct, the base wages of the employee will continue during the period of such incapacity.”

Paragraph 7 of this same contract further provides as follows:

“The employee shall be subject to the benefits as he may be entitled to under the United States Employees’ Compensation Act of September 7, 1916, as amended, for injury sustained while on the performance of his duty.”

In the Fall of 1947, it was determined that Libelant had contracted tuberculosis of both lungs. He was hospitalized and a claim for compensation under the Act was filed. On July 18, 1949, the claim was rejected. However, upon further consideration, on May 26, 1950, Libelant was awarded compensation for the tuberculosis as such was occasioned by his employment.

During the period that intervened between the Fall of 1947 and May 26, 1949, Congress passed Public Law 357, which included Sections 201, 303(g) and 305(b). The lower Court held that such Act abrogated the vested interests of Libelant in his contract of employment with the United States.

Not only did Congress, if the lower Court was correct in such finding, abrogate the vested interest of Libelant in his employment contract, but also in the *contractual* obligation of the United States to furnish Libelant with a seaworthy vessel upon which he had been employed. Libelant had performed each and every obligation required of him by his contract with the United States. The United States was obligated under the same contract to pay Libelant wages in the amount of his base pay for the duration of his illness, compensation as provided under the F. E. C. A., and contractual damages sustained by

Libelant as the result of the failure of his employer to furnish him with a seaworthy vessel. This latter obligation is contractual and is not founded on negligence.

The Osceola, 189 U. S. 158;

Chelentis v. Luckenbach S. S. Co., 247 U. S. 372;

Carlisle Packing Co. v. Sandanger, 259 U. S. 255;

Pacific S. S. Co. v. Peterson, 278 U. S. 130;

Cortes v. Baltimore Insular Line, 287 U. S. 367;

Mahnich v. Southern S. S. Co., 321 U. S. 96;

Seas Shipping Co. v. Sieracki, 328 U. S. 85;

Socony Vacuum Oil Co. v. Smith, 305 U. S. 424;

The Arizona v. Anelich, 298 U. S. 110.

In the case of *Seas Shipping Co. v. Sieracki*, *supra*, at 93, the court said regarding unseaworthiness:

“Most often perhaps these have been limitations arising from the erroneous idea that the liability is founded on negligence, and therefore may be defeated by the common-law defenses of contributory negligence, assumption of risk and the fellow servant rule.”
(Citing cases.)

At page 95, with reference to the duty to supply a seaworthy vessel, the court further stated:

“It is a form of absolute duty owing to all within the range of its humanitarian policy.”

There can be no question that the three causes of action set forth in the First Amended Libel *in Personam*, are contractual [Clk. Tr. p. 2].

The interest of the Libelant in each of these contractual obligations of Respondent was a vested interest, just as much as the interest of Lynch in his War Risk Insurance. *Lynch v. United States*, 292 U. S. 571, 577. The court stated in that case that “. . . War Risk Policies, being contracts, are property and creates vested rights.”

The obligations of the United States to provide Libelant with wages to the termination of his illness, maintenance until the termination of his illness, and damages for the failure to supply him with a seaworthy vessel—if such caused the tuberculosis, were contractual and were vested rights of Libelant accruing prior to October 14, 1949.

Under the circumstances, Congress did not have the power to abrogate these contractual rights.

“To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a Municipality or a citizen.”

Lynch v. United States, supra;

Sinking Fund Cases, 99 U. S. 700, 719.

The United States is just as liable on its contracts as an individual.

United States v. Smith, 94 U. S. 214, 217;

Priebe & Sons v. United States, 332 U. S. 407;

United States v. Standard Rice Co., 323 U. S. 106;

Hollerbach v. United States, 233 U. S. 165.

The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a state or the United States. Rights against the United States arising out of contract with it are protected by the Fifth Amendment.

United States v. Central P. R. Co., 118 U. S. 235, 238;

United States v. Northern P. R. Co., 256 U. S. 51;

Lynch v. United States, 292 U. S. 571, 579.

Article I, subdivision 10 of the Constitution provides that no state shall pass any law impairing the obligation of contracts. This has been held to also apply to Federal legislation on the grounds of violating the due process clause.

Louisville Bank v. Radford, 295 U. S. 555;

Kuehner v. Irving Trust Co., 299 U. S. 445;

Calder v. Bull, 3 Dall 386, 388;

Lynch v. United States, 292 U. S. 571.

Congress has no power to repudiate its contractual obligations to repay borrowed money.

Perry v. United States, 294 U. S. 330.

Nor would it seem under the very same theory and logic that they could repudiate any other contractual obligation to pay money for services performed when the other party to the contract has fully performed.

III.

The District Court Erred in Finding That the Libelant Did Elect to Accept Compensation in Lieu of Any Other Contractual Benefits to Which He Was Entitled.

Libelant was entitled, pursuant to his contract of employment with the Respondent, to maintenance and cure, wages until the termination of his disability, damages if his disability resulted from an unseaworthy vessel, and to compensation under the F. E. C. A. at such time as it might be determined that the illness from which he suffered was the result of his employment.

The Respondent did not pay maintenance to the Libelant as was the legal duty, as there was no question but what Libelant fell ill during his employment as a seaman.

By keeping Libelant in an indigent condition, he was forced to accept compensation under the F. E. C. A. [Libelant's Ex. 5].

There is no question but what Libelant was a seaman and was entitled to be paid maintenance by Respondent.

O'Donnell v. Great Lakes Dredge & Drydock Co.,
318 U. S. 36;

The Osceola, 189 U. S. 158;

Aguilar v. Standard Oil Co., 318 U. S. 724;

Cortes v. Baltimore Insular Line, 287 U. S. 367;

Farrell v. United States, 336 U. S. 511;

Harden v. Gordon, 2 Mason 541, Fed. Cas. No.
6047.

The undisputed evidence was that the Libelant

“was without funds with which to live upon and support his wife and was forced thereby to take the funds awarded him under his claim for compensation under the F. E. C. A. for tuberculosis that he suffered as the result of his employment under the contracts of employment with the United States Army Transport Service. That Libelant has been unable to work since he was taken to the hospital suffering from what later was discovered to be Tuberculosis, in the fall of 1947.” [Libelant’s Ex. 5.]

In the face of this evidence, there is no foundation in fact for the finding of the Court that Libelant voluntarily, without coercion, duress, or influence whatsoever, accepted compensation payments.

Coercion sufficient to avoid a contract need not, of course, consist of physical force or threat of it. Social or economic pressure illegally or immorally applied may be sufficient.

Hartsville Oil Mill v. United States, 271 U. S. 43;
Hazlehurst Oil Mill Co. v. United States, 70 Ct. Cl. 335;

Stuck Const. Co. v. United States, 96 Ct. Cl. 186.

It is held that duress is a condition of mind resulting from such improper pressure that the will is overcome and an involuntary act or contract is induced; a condition of mind produced by an unlawful intimidation, and resulting in the doing of an act which is not required by law.

O’Toole v. Lamson, 41 App. D. C. 276.

Economic duress is recognized as the basis for invalidating contracts.

Snyder v. Rosenbaum, 215 U. S. 261.

Nor can one retain the gain obtained by the exercise of duress.

Kelble Operating Corp. v. Jarka Corp., 96 F. 2d 601.

The obligation of the United States to pay the Libelant maintenance was an obligation annexed to his contract of employment as a seaman.

Aguilar v. Standard Oil Co., 318 U. S. 724;

Cortes v. Baltimore Insular Line, 287 U. S. 367;

The Osceola, 189 U. S. 158;

Harden v. Gordon, Fed. Cas. No. 6047.

By refusing to pay Libelant his maintenance as was required by law, Respondent actually forced Libelant to accept compensation. This was duress and coercion at their best. Not only is the record absolutely bare of any evidence to support the finding that Libelant freely and voluntarily accepted compensation without coercion or duress, but such finding is in direct conflict with the undisputed evidence [Libelant's Ex. 5].

IV.

The District Court Erred in Dismissing the Libel.

In view of the undisputed coercion and duress in obtaining the payment to Libelant of compensation; in view of the fact that Congress was without power to enact legislation abrogating the contractual obligations of the United States to the Libelant; and in view of the fact that Sections 201 and 305(b) of the F. E. C. A. exclude seamen from the exclusive liability of the United States under the F. E. C. A., the libel should not have been dismissed.

V.

**The District Court Erred in Not Finding That Libelant
Was Entitled to Recover From Respondent on
His First and Third Causes of Action.**

In view of the foregoing, it is clear that the lower Court should have found in favor of Libelant on his first and third causes of action. The second cause of action is for maintenance, but the payment of compensation is the same as the payment of maintenance and a recovery of maintenance and the collection of compensation would amount to a double recovery.

Conclusion.

It is respectfully submitted that Congress was without power to abrogate the obligations of the Contract of the Army Transport Service with Libelant and to abrogate the contractual obligation to furnish Libelant with a seaworthy vessel; and that the Decree of Dismissal be reversed with instructions to find in favor of Libelant for wages and to determine the liability of Respondent for unseaworthiness of vessels upon which Libelant was required to work.

Respectfully submitted,

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